



Law, Justice, and Indian Affairs Interim Committee

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56th Montana Legislature

SENATE MEMBERS

LORENTS GROSFIELD, PRESIDING OFFICER
SUE BARTLETT
JOHN BOHLINGER
DUANE GRIMES
MIKE HALLIGAN
LINDA J. NELSON

HOUSE MEMBERS

CAROL C. JUNEAU, VICE PRESIDING OFFICER
GAIL GUTSCHE
GARY MATTHEWS
DANIEL W. "DAN" MCGEE
JIM SHOCKLEY
JAY STOVALL

COMMITTEE STAFF

LEANNE KURTZ, RESEARCH ANALYST
VALENCIA LANE, STAFF ATTORNEY
JOHN MACMASTER, STAFF ATTORNEY
LOIS O'CONNOR, SECRETARY

MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

Third Meeting of Interim
Missoula Fire Station No. 4
Missoula MT
November 18 and 19, 1999

COMMITTEE MEMBERS PRESENT

Sen. Lorents Grosfield, Presiding Officer
Rep. Carol C. Juneau, Vice Presiding Officer
Sen. Sue Bartlett
Sen. Duane Grimes
Sen. Mike Halligan
Rep. Gail Gutsche
Rep. Gary Matthews
Rep. Daniel W. "Dan" McGee
Rep. Jay Stovall

COMMITTEE MEMBERS EXCUSED

Sen. John Bohlinger
Sen. Linda J. Nelson
Rep. Jim Shockley

STAFF PRESENT

Leanne Kurtz, Research Analyst
Connie Erickson, Research Analyst
Valencia Lane, Attorney
Lois O'Connor, Secretary

VISITORS

Visitors' lists for November 18 and 19, 1999, (ATTACHMENTS #1 and #2)

COMMITTEE ACTION

- Approved the September 16, 1999, minutes as amended and the September 17, 1999, minutes
- Approved that the letter regarding the chapel issue not be sent to the Architectural and Engineering Division of the Department of Administration
- Approved December 10, 1999, as the next meeting date

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Sen. Grosfield, Chair, at 8:40 a.m. Roll call was noted; Senators Bohlinger and Nelson and Representative Shockley were excused. (ATTACHMENTS #3 and #4)

Sen. Halligan **moved** that the minutes from the September 16, 1999, and September 17, 1999, meetings be approved. Rep. Juneau made a **substitute motion** that the September 16, 1999, minutes be amended to include comments made by Rep. Joan Hurdle, House District #13, regarding the alleged rape of a Native American female inmate at the Billings Prerelease Center. **Please Note:** Committee staff relistened to mark 36.5 of Tape 4 of the September 16, 1999, meeting. Comments and a chronology of the incident by Rep. Hurdle and Director Day's and Warden Acton's responses have been incorporated into the original minutes which are on file in the Legislative Services Division. The September 16, 1999, minutes were approved as amended and the September 17, 1999, minutes were approved unanimously.

Leanne Kurtz, Research Analyst, Legislative Services Division, provided a copy of SJR 14 Sentencing Study Update on Criminal Justice Data Systems as prepared by Susan Fox, Research Analyst. (EXHIBIT #1) Ms. Kurtz said that Ms. Fox would provide a more thorough update on the sentencing study at the December 10, 1999, meeting.

HJR 37 - WOMEN'S PRISON STUDY UPDATE

Dan Chelini, Department of Corrections, provided a copy of Department responses to the Committee's information requests from the September meeting. (EXHIBIT #2)

Committee members expressed their frustration over the lack of sufficient data, their inability to receive meaningful data with which to make educated and comprehensive decisions for the citizens of Montana, and the length of time it takes to receive information.

Rep. Juneau commented that statistics kept by the prison systems should identify various ethnic groups, in particular Native Americans, since they are over represented in the inmate population. Demographic trends, such as whether inmates come from single parent homes or whether they lack a formal education, are needed to design specific programs to meet the needs. She said that each of the seven tribes are separate nations. It is important for them to know how many of their members are incarcerated in the prison systems so that each tribal group could begin addressing and preventing some of the reasons that Native Americans are being incarcerated. She also suggested that the Department begin communications and discussions with the tribal courts, particularly in the juvenile offender arena.

Sen. Bartlett asked whether offenders were given aptitude or interest assessment tests upon intake and why were there so few vocational training programs currently available. **Director Rick Day, Department of Corrections** said that the Department is actively pursuing vocational education training programs but it would not be cost effective to implement many programs, particularly on the MWP industry side, because of the small number of inmates. The Department's goal is to have vocational education programs designed to train inmates to support prison industry activities as well as designed to review inmate potential for job opportunities after they leave prison. He added that the MSP has a broader range of programs that are supported by self-generated revenue except for the vocational education teaching portion.

Referring to the information system, Mr. Day said that:

- There is not a uniform juvenile data system;
- ACIS is a 1970s- and 1980s-based system that was developed to track inmates. If comparison requests are made about sentence lengths or the number of Native American inmates in the prison systems, for example, a lengthy manual process must take place to retrieve the data. The issue becomes staff time to gather, compare, and prepare the information as requested;
- The Department is in the process of phasing out ACIS and implementing the ProFiles (Programmed Reporting of Offender Files) system which will produce necessary comparisons more readily;
- The Department will supply the Committee with a preliminary list of data elements that the ProFiles system will capture by the end of the year;
- The ProFiles system is being built in-house but it is based on advanced methodologies received from out of state; and
- The Courts, Department of Justice, and the DOC data systems are currently in the process of interfacing.

Referring to the alleged rape of a female inmate at the Billings Prerelease Center, Mr. Day said that:

- the female inmate who made the allegation escaped from the Prerelease and was gone for approximately two months before being returned to the MWP;
- no allegations were made to any agency during the walk-away period and physical evidence supporting the allegation is nonexistent;

- upon the inmate's return to MWP, discussions were conducted about the allegation and whether the incident occurred. Once the allegation was confirmed in July, the information was conveyed to the proper local government authorities; and
- since the incident did not happen within the confines of the MWP, the Department has no direct jurisdiction over the issue and it must be referred, investigated, and prosecuted by local law enforcement.

Rep. Juneau requested that a copy of the Department's chronology of the alleged incident be provided to the Committee and expressed her concerns about whether a proper investigation of the incident has taken place. Mr. Day said that the alleged incident has been assigned to a Billings investigator and is currently under active investigation. Based on his experience, however, further information would be unavailable because the incident is still under investigation. Rep. Juneau requested that the Committee write a letter to the City of Billings expressing its concerns about the incident and ask if the Committee could be kept informed of the investigation's progress.

Referring to the female inmates in New Mexico, Mr. Day said that:

- the Department has received verbal notification that the contractor for the New Mexico facility has lost its contract with the county and will be replaced by January;
- the Department is exploring its options which are: (1) leaving the inmates at the facility under a new contractor, (2) moving the inmates to another site, or (3) moving them to the Crossroads Correctional Center in Shelby temporarily until the MWP's expansion is completed.

Sen. Bartlett asked why the contractor was replaced and what research does the Department conduct when selecting an out-of-state facility to house offenders. Mr. Day said the reasons for the contract loss include the operation of the facility and future charges and rates. He added that he, case managers, and the wardens directly view and visit any facility that will house Montana inmates.

Sen. Grosfield asked what percentage of female Native American offenders were incarcerated in the federal prison system before being incarcerated in Montana. Mr. Day said that when a female offender enters the state correctional system, a presentence investigation (PSI) will document the offender's previous record. However, when an offender leaves the federal system and unless they are returned to the Montana system, the Department would have no information about what happened to the offender. The best information regarding federal convictions is the national database and the best information regarding state criminal convictions is the DOJ database. Since PSIs are an important criminal investigation tool, a discussion on them will be an agenda item for a future meeting so that the Committee can consider whether PSIs should be required for all cases.

Mr. Day said that he would provide information regarding the prison workforce and juvenile offenders as they pertain to Native Americans as requested by Rep. Juneau. Ms. Kurtz said that she would supply the Committee with a copy of the Board of Crime Control's Annual Report which shows a breakdown of how many juvenile offenders are Native American. In addition, Mr. Day suggested that Candice Neubaur, Classification Manager, conduct a quasi-work session with the Committee regarding the classification system and he provided information on the Executive Order Creating the Governor's Standing Committee for Inmate Projections. (EXHIBIT #3) Committee staff provided a memo from Bob Person, Executive Director, Legislative Services Division expressing his concern that in light of the way the Executive Order was written, it may create separation of power issues. (EXHIBIT #4) Mr. Day said that the separation of powers issue would be addressed before the Executive Order was signed and he requested that a member be appointed to the Standing Committee.

HJR 37 - WOMEN'S PRISON STUDY UPDATE

Ms. Kurtz presented a copy of and an overview of HJR 37, Study of Women's Prison Issues and Options Paper. (EXHIBIT #5)

The following is a synopsis of the Committee's discussion of each study topic:

Topic #1 - Demographic Profile

- The Committee wanted to continue to receive demographic and profile information from the Department if possible and it also requested the inclusion of information regarding vocational education programs.

Topic #2 - Dramatic Increase in Population at MWP

- The Committee expressed the importance of receiving statistics on why more women are being incarcerated, such as whether the crimes they commit are violent and what direct effect does felony DUIs have on the population.
- Although the Committee realized that good and readily available information was needed to make good policy decisions, they also realized the inadequacy of information collection to date and that the information they currently have is insufficient but would probably be the only information that they would receive. (This will be noted in the final report on HJR 37)

Topic #3 - Placement of Women in Out-of-State Contract Beds

- Video technology, telephone calls, and visitation are being used to provide a means for women placed in out-of-state facilities to communicate with their children. However, it is unknown whether video technology is being used at the New Mexico facility.
- If the inmates are moved to the Shelby facility, it will be done before Christmas. The Shelby facility will require minor alterations before the inmates can be moved, such as closing the women's segment from the visual view of the male segment. Women inmates will be returned to the MWP once the expansion is completed.

Topic #4 - Classification

- The Committee requested that Candice Neubaur provide an overview of the prison classification system at its February meetings.

Topic #5 - Length of Stay

- Although length-of-stay information is available on the ACIS system, it takes extensive staff effort to retrieve it. Length-of-stay information on the new ProFiles system will be of interest to all legislators.
- The severe limitation of the ACIS system will be noted in the final report.
- The ProFiles system, which will provide more detailed information, will begin to come online in June 2000 in a piecemeal fashion until completed in the fall of 2000.
- The information requested by the Committee will not be most effectively provided by the DOC's database. The detailed information that the Committee is seeking must come from the sentencing information within the Montana Court and Department of Justice database systems. According to the most recent information, the Court system is much further behind in bringing its database online than either the DOC or the DOJ.

Topic #6 - Access to the Board of Pardons

- There was no discussion on this topic. The information was sufficient.

Topic #7 - Utilization of Education and Training Programs Both Publicly and Privately Provided

- The DOC will request from the 2001 Legislature a budget increase for contracts for mental health, medical, and educational services which will be based on its estimated population at the MWP. However, the request will not be made until the MWP expansion is completed. The preliminary budget increase estimation will be provided to Committee staff for distribution.
- Cognitive and behavior programs are based on a national corrections model. The MWP has developed cognitive and behavior programs specifically designed to the women's criminal thinking area.
- The Committee felt that the cognitive and behavior program materials would be more effective if they were shaped to fit the experiences of juveniles, men, and women because each react differently to their experiences in life.
- Information was requested for whether aptitude, vocational, and educational assessments were provided to inmates upon intake at MWP.

Topic #8 - Vocational Education

- According to Department data, 78% of MWP inmates had a high school diploma or GED upon intake and 15% were educated beyond high school. The Committee wanted to note that the majority of the women are ready for vocational training.
- If there are aggressive vocational education programs provided, the information should show that there is an attempt to use private resources and industries so that the state is not inadvertently competing with private sector businesses.

Topic #9 - Mental Health Treatment/Psychotropic Drugs

- The provision of mental health services will continue to be a Department concern if the women inmates are moved from the New Mexico facility to Shelby. If contract mental health services

are not available in Shelby, the Department will attempt to control the problem through inmate placement. Those who need more intense mental health services will be placed at the MWP.

- All inmates have equal access to mental health services from a private provider through contract. Sessions are conducted on-site at MWP and are controlled by the psychiatrist, the Department's medical director, and mental health employees who work for the private provider.
- No physical file review has been conducted to establish whether Native American inmates at MWP were denied equal access to mental health services as other inmates. However, the Department could audit inmate medical files to see if mental health services were requested and whether the service was provided.
- Generally speaking, female offenders will access medical and mental health services more frequently than male offenders and medical costs for female offenders are much higher than medical costs for male offenders.
- Information was requested on what impact fetal alcohol syndrome (FAS), fetal alcohol effects (FAE), attention deficit disorder (ADD), and attention deficit and hyperactivity disorder (ADHD) have on the corrections population. The Department was unsure how detailed this information was in an offenders medical file.

Topic #10 - Illegal Drug Use

- There was no discussion on this topic. The information was sufficient.

Topic #11 - Spiritual Activity

- At the September meeting, a motion was passed to recommend to the Department of Administration's Architectural and Engineering Division that all recognized faiths in the MWP be accommodated with the chapel construction. Committee staff wrote a letter but did not send it because staff was unsure whether the Architectural and Engineering Bureau was the appropriate place to send it. Ms. Kurtz provided a memo from Greg Petesch, Code Commissioner, clarifying certain issues contained in House Bill No. 5 that surround the spiritual activity center and who had oversight and review responsibility of the project. (EXHIBIT #6)
- The Department of Administration is taking the position that the Architectural and Engineering Division is bound by the language in HB 5 which exempted the chapel project from state bidding requirements. According to Mr. Petesch's opinion, the appropriation of private funds was invalid because the Legislature cannot appropriate private funds. Therefore, the appropriation, the exemption language, and the conditions of limitations on the appropriation are likewise invalid. Mr. Petesch was also of the opinion that the chapel project should go through the Architectural and Engineering Division and should be subject to all competitive bidding laws.
- Ms. Lane, Committee's legal staff, suggested an Attorney General's opinion on how to proceed because the issue should be clarified in the areas of liability for the building construction and design and who has oversight responsibilities if there are damages to the MWP while the chapel is under construction. Since the chapel project will not be under construction for quite some time, Ms. Lane said that the 2001 Legislature should revisit the issue.
- Many members of the MWP Chapel Committee fought very hard during the 1999 Session to get the exemption language included in HB 5 and they feel threatened by the uncertainty of a legislative committee interfering in the project.
- A Committee member recommended legislation to make sure that the oversight duties are carried out by the Architectural and Engineering Division, adding that the Committee should not be in the middle of the issue.

- Other members felt that if legislation is drafted, there is still the question of donated materials and services which the Women's Prison Advisory Committee is relying on in order to build the chapel.
- If legislation is proposed, the Committee would like it written so that donated materials and services would be acceptable.
- The suggestion was made that Committee staff write a letter to members of the Advisory Committee to mend fences and invite Advisory Committee members to speak to the LJAIC about what they had planned.
- The issue of separation of church and state was brought up because of the Committee's involvement in the chapel project. Ms. Lane reminded the Committee that the chapel project was a very small part of the MWP study which is only one of the many issues that the Committee needs to be reviewing.
- The Committee requested that staff review the state bidding statutes and decided against an Attorney General's opinion on the chapel issue.
- The MSP chapel was built with donated funds and was overseen by the Architectural and Engineering Division.
- Rep. McGee **moved** that the letter regarding the chapel issue not be sent to the Architectural and Engineering Division of the Department of Administration. Motion passed unanimously.
- Committee staff provided e-mail letters from several people from Billings who requested the need for an in-house chaplain at the MWP. (EXHIBITS #7 and #8 respectively)
- The Committee was told that a felony conviction would not automatically exclude a person from coming into the prison for the purposes of prison ministries. However, it would provide a "red flag" that would require serious consideration by prison officials before entrance is allowed. The Committee requested a copy of the Supreme Court's recent Stanko decision regarding access to inmates for religious purposes.

Topic #12 - Effectiveness of the Women's Prison System in Funneling Inmates into Appropriate Levels of Incarceration

- There was no discussion on this topic. The information was sufficient.

Topic #13 - Data

- The Committee recommended that Topic #13 be folded into Topic #2.
- The Committee requested information on program outcomes, particularly in the area of recidivism rates, and information from other states data programs to make sure that all necessary information categories are contained in the new ProFiles system.

OTHER DOC ISSUES

Modified FTE update

Director Day provided a copy of Department of Corrections: Public Safety and Trust which contains information on the modified FTE request by the DOC. (EXHIBIT #9) The proposal creates 31 FTE correctional officer positions at MSP and 28 FTE probation and parole officer positions for the community corrections program.

Rep. McGee asked about the \$2.7 million for the 28 FTE probation and parole officers . Mr. Day said that the \$2.7 million is used for probation and parole officer salaries, benefits, vehicles, and overhead costs over a 2-year period. Also included in the cost is a treatment package for employment services, chemical dependency services, and family-based services for juvenile offenders. The \$2.7 million came from a contingency account appropriated to the Office of Budget and Program Planning and vacancy savings and placement dollars within the Department. Mr. Day said that he would provide a breakdown of how the \$2.7 million was spent.

Sen. Grimes recommended that the Department bring probation and parole officers to the 2001 Session to "jolt the Legislature awake". He said that he has been threatened over the phone by offenders who are on probation and parole and the Legislature has charged the DOC with the public security of the state. Sen. Grimes did not believe that any legislator had a clear understanding of the magnitude of that charge or of the types of some people that Montana has in its communities.

Sen. Bartlett said that what was disturbing to her was that the Department could not convince the Appropriations Subcommittee on Institutions or the Legislature that the need was so dire. She said that every legislator has a concern about public safety and it was offensive that the positions were acquired the way they were. Mr. Day said that the Department carried the message to the Legislature to the best of its ability, it cautioned against the removal of FTE at MSP, and it tried to emphasize the dramatic caseload growth in probation and parole.

Rep. McGee said that the problem is not whether the FTE are needed but whether it could be justified before the Legislators who have to make the decisions. Mr. Day said that Montana had no availability of male or female prison space and the Department dug itself out of a hole that was created for a number of years. He requested that the Committee not only consider those areas where there may have been problems within the correctional system but also consider those deficient areas that the Department has managed to overcome in the last 8 years.

Rules Update

Ms. Lane provided a copy of the Department's proposed private correctional facilities licensing rules. (EXHIBIT #10) She said that since the last Committee meeting, she has met with the Department to discuss the problems and concerns about the proposed licensing rules. The Department agreed that it would take immediate steps to correct the technical concerns in the rules adoption notice which it has done. She said that she was pleased with the steps that the Department has taken and it was on the right track.

Lois Adams, Rules Officer, Department of Corrections, provided written comments -- Private Correctional Facilities - Licensing Rules. (EXHIBIT #11)

OTHER BUSINESS

Rep. McGee said that in the 1999 session, he sponsored HB 115 on behalf of the Department. The language of the bill dealt with direct sentencing to the Treasure State Boot Camp by the Court and the Department's responsibilities back to the Courts. He said that he received a letter from Craig Thomas, Board of Pardons and Parole, stating that the Department's legal staff had interpreted the language to mean that the Board sentences an offender to the Boot Camp as part of the offender's parole requirements. He said that this was not the intent of the legislation and asked that the Committee authorize staff to write a letter to Greg Petesch, Code Commissioner, requesting that he provide an interpretation of HB 115 and provide an opinion on how HB 115 may apply to the Board of Pardons and Parole.

Sen. Halligan was unsure whether Mr. Petesch could give an opinion on legislative intent. If a statute is interpreted wrong or if it is not clear, it must be changed in the Legislature. He suggested that Rep. McGee write a strongly worded letter to the Department clarifying his intent with HB 115.

Update on Indian Education and HB 528

Rep. Juneau said that HB 528 was an attempt to clarify the intent of Article X, section 1(2), of the Montana Constitution which provides that the state recognize the distinct and unique cultural heritage of American Indians and expresses the state's commitment to establishing educational goals that help preserve the cultural integrity of American Indians. A study was conducted by the 1995-96 Interim Committee on Indian Affairs to see how Article X was being implemented in Montana's educational system and it was found that not much had been done. HB 528 gives guidance to the educational community by trying to encourage curricula that focuses on Montana's Indian people. A subcommittee made up of Representatives of the Board of Regents and the Board of Public Education was established to review and prepare a plan of action to implement HB 528. Rep. Juneau requested that the Committee approve a letter to Governor Racicot commending the members of the State Board of Education for the action taken to implement the Indian education provision of Article X, section 1(2). (EXHIBIT #12)

Rep. McGee asked for a definition of "contemporary issues" and how the phrase relates to "cultural integrity" as required by the Constitution. Rep. Juneau said that contemporary issues are part of the Indian culture and include water rights compacts, land issues, and any other issue that pertains to Montana's seven tribal nations. She said that Indian culture is progressive and the issues are worthy of

study and consideration to make people more aware of the concerns of Indian people. If more people are informed and aware, better solutions can be found.

Sen. Halligan **moved** the approval of the letter. Motion carried with Rep. McGee voting no.

HJR 12 - COMMISSION ON INDIAN AFFAIRS STUDY UPDATE

Connie Erickson, Research Analyst, Legislative Services Division, presented an overview of Indian Affairs Commissions in Other States. (EXHIBIT #13)

Sen. Grosfield asked what the budget was for the Commissioner on Indian Affairs Office. **Wyman McDonald, Coordinator of Indian Affairs**, said that the current budget is \$115,000 annually. HB 670 also appropriated \$100,000 to the Office for economic development positions which have not been filled to date.

Rep. Juneau asked how the Commission on Indian Affairs Study information was being communicated to the tribes. Ms. Erickson said that she will begin attending the Wyoming - Montana Tribal Leaders Council meetings and she will meet with state agency people to discuss and receive suggestions on how they think the Commission should be structured. Rep. Juneau said that although information from other states is needed, she suggested that the focus remain on Montana's needs.

Rep. Grimes requested Native American census information from the other states and how many different tribes may be reflected in those states as compared to Montana.

BURIAL LAW/BURIAL BOARD OVERVIEW/DISCUSSION

Germaine White, Confederated Salish and Kootenai Tribes, provided a copy of HB 131, the Human Skeletal Remains and Burial Site Protection Act, and a briefing document on the Act. (EXHIBIT #14)

Rob Hunter, Managing Attorney, Confederated Salish and Kootenai Tribes, said that federal law currently protects the desecration of Native American burials and burial materials on reservations, federal land, and federal jurisdictions. There was also a need to extend those protections to state and private lands where traditional camp and grave sites, Indian highways, and river corridors with historical importance were left unprotected because federal law did not apply to those jurisdictions. He said that HB 131 provides protection for Native American human remains and burial items found on private or state land that normally, under common law, would belong to whomever owned the land. However, human remains cannot be owned and, if Indian remains are located on private or state land, the people

who own the land are legally responsible to hold the remains or burial goods in trust for the descendants of the human remains. HB 131 sets up a process to allow the proper disposition of those remains, such as leaving the remains where they were found or to allow disinterment and reburial in another location.

Mr. Hunter said that this issue brings up many confidentiality and public right to know questions. There are many thousands of Indian skulls and valuable artifacts in museums today because of the pilferage of Indian graves. It was a very lucrative black market business that needed to be stopped. If a state entity is addressing a burial site, how is confidentiality balanced against the public's right to know? HB 131 also establishes the Burial Preservation Board. If the Board meets and issues of confidentiality are brought forth, the Board is allowed to close its doors to discuss the burial without threatening the location of the grave site while not impeding on the citizens' right to know how many burial sites the Board is addressing on a statewide level.

Other issues expressed by Ms. White were: (1) retroactivity; (2) a biennial appropriation for the Burial Preservation Board to defray members' travel expenses; and (3) how to ensure in the law that there is not a need for compensation when there is the return of human remains to tribes. For example, she said that Native American human remains and objects were found on private land and they were loaned to the Wibaux Museum. The daughter of the family who loaned the remains said that they were her property and that it would be an illegal "taking" if she had to surrender them. At the time that HB 131 was proposed in 1991, it did not include language to address retroactivity and any human remains found prior to 1991 are not protected by the law. However, human remains have quasi property rights in that family members have the right and responsibility to care for their deceased ancestors. Ms. White added that federal nexus occurs at any time a federal agency is involved and most state museums receive federal permits and funds. However, the Wibaux incident occurred when the human remains were part of a group of objects that came to the museum as a loan and ownership had never been transferred.

Sen. Halligan asked about a retroactivity provision as it pertains to museums. Ms. Lane said that issues exist in terms of retroactivity and the ownership of burial remains and materials in that there is an argument that human remains cannot be owned. Although she was not familiar with Indian law, state statutes say that laws are not retroactive unless the law specifically states that it is retroactive. If HB 131 does not specifically state that it is retroactive, then it is not retroactive. Sen. Halligan suggested amending HB 131 to include a retroactive provision for human remains only and omit burial objects.

Rep. Juneau asked if HB 131 applied to human remains only or burial goods only or were they two separate issues. Mr. Hunter said that HB 131 applies to burial goods as well as remains because, in essence, it is viewed upon as looting a burial site.

Sen. Grosfield feared that the retroactivity would open a potential "can of worms" with respect to objects in museums. Ms. White said that HB 131 was not meant to be a policy for tribes to repatriate and it would not impact state museums. However, if a privately funded museum had human remains and burial goods on display that came out of the same grave, tribes would consider those burial goods associated objects of the burial site and would, under HB131, ask that tribes have an opportunity to make a decision as to how to proceed based on traditional guidance. Sen. Grosfield asked how HB 131 affects privately owned fee land within the boundaries of reservations. Ms. White said that for the tribes, tribal lands mean all land within the boundaries of a reservation and, often times, tribes discuss jurisdictional issues with the state. HB 131 does not address reservation boundaries, only state and private land within the state. However, tribal jurisdiction on the reservations is implied by state law and tribal people have the responsibility to attend to the inadvertent discovery of Native American human remains. She requested the Committee's guidance on how the tribes can circumvent the jurisdictional issue with regard to privately owned fee land within reservation boundaries. Mr. Hunter added that the tribes are currently in discussions with county officials and the state to allow the tribes to properly take care of Native American remains found on privately owned fee land.

Ms. Lane said that the implication of retroactivity is not a minor issue. There are legal questions that arise, particularly in the area of fines and penalties; and she suspected that was why HB 131 was drafted the way it was in the first place. Ms. Lane said that fees and penalties are very difficult to establish retroactively without coming into an ex post facto question which is a law that is passed after the occurrence of an act that retrospectively changes the legal consequences of the act. She did not believe that the Legislature could make the fines and penalties apply to occurrences prior to the passage of HB 131 (1991). Ms. White said that the fines and penalties language in HB 131 was made in an effort to deter looting, grave robbing, and black market trafficking. They would not apply to those people who inadvertently disturbs burial remains.

Sen. Bartlett asked what the most compelling need was--to address retroactivity in regard to human remains or retroactive coverage for burial materials. Ms. White said if there are associated burial goods with specific human remains, tribes would want the burial goods covered. She added that it is not the tribes' intention to search for unassociated burial objects.

The Committee requested research into the retroactivity issue and fines and penalties and requested an update at a future meeting.

OTHER INDIAN AFFAIRS ISSUES

Wyman McDonald, Coordinator of Indian Affairs, provided a copy of a letter that he wrote to Governor Racicot regarding the modified FTE request and appropriation by the Department of Corrections. (EXHIBIT #15) He also provided a copy of a letter from Governor Racicot that included the appointments to the State-Tribal Economic Development Commission. (EXHIBIT #16) Mr. McDonald said that tribal representatives living on and off of the reservation and including the Little Shell Tribe need to be brought into a forum with state people on a regular basis. In addition, he requested that the Little Shell Tribe be included if HB 131 were amended.

HB 412 UPDATE

Rep. Juneau provided a copy of the HB 412 Advisory Committee membership. (EXHIBIT #17) She said that HB 412 was enacted to take the word "squaw" off Montana locations and sites. There are 74 sites in 29 counties and on forest service land in Montana that will be affected. The Advisory Committee met in October for the purpose of drafting a handbook to be distributed to the interested entities regarding how the Advisory Committee works, where the name changes are to take place, and how new names are to be created and submitted to the federal Board of Geographic Names. She said that the Advisory Committee is voluntary and it is currently involved in finding a funding source for the Advisory Committee's various activities and for printing the handbook.

Rep. McGee asked if one substitute name could apply to all of the sites involved. Rep. Juneau said that as groups come together to discuss the various sites, there may be individuals, historic events in the area, or Indian leaders that a site could be named after. Mr. McDonald added that if one substitute name were chosen for all of the sites, it would eliminate local and public participation which is contrary to federal law.

SPIRITUAL ACCOMMODATIONS FOR PRISONERS

Maylinn Smith, Director, Indian Law Clinic, University of Montana School of Law, discussed the need for sweat and pipe carrying ceremonies in the state and regional prisons, what the tribal interests were to see that these ceremonies continue, and what the prisons' and regional prisons' needs were in terms of security. Her concern was that there is a blanket ruling that there cannot be sweat and pipe carrying ceremonies which would be detrimental to inmate rehabilitation. She said that if 30% of the

prison population represents Indian inmates, it is an issue that needs to be addressed. According to her information, prerelease centers allow sweat and pipe ceremonies through a consent decree, and she asked why sweat and pipe ceremonies cannot be extended to the state and private prison facilities and why the issue cannot be resolved before Indian inmates have to resort to taking legal action.

Mr. McDonald said that the most contentious issues facing Indian inmates is their right to practice traditional religion under the Indian Religious Freedom Act. He said that according to a letter from Perry Eskridge, DOC Legal Counsel, "smudge and pipe ceremonies have been terminated at MSP in compliance with the Department's adoption of a nonsmoking policy". Mr. McDonald said that sweat, smudge, and pipe ceremonies have nothing to do with smoking as people know it.

Mike Cronin, Public and Victim Information Specialist, Department of Commerce, said that there is a sweat lodge located at MSP and there are plans to enlarge it; and, by contract, regional prisons must institute Department correctional policies. If regional prisons are not doing things that are being done in MSP or MWP, they are not in full compliance with the contract and it would need to be addressed. He added that he was surprised at Mr. Eskridge's letter because DOC policy recognizes the Native American religion as one of the approximately 75 religions that are acceptable to practice within the prison system. He added that the Department's policy is not a nonsmoking policy but a no-tobacco policy. Only the amount of tobacco-related products necessary to conduct ceremonies would be allowed and it would be stored by the Religious Activities Center. As a result, an Indian inmate would not be allowed to carry a product that any other race or culture of inmate is not allowed to carry. He added that he would check into the smudging issue.

The Committee requested an update on what the regional prisons are doing to address sweat and pipe carrying ceremonies and smudging and an update on the enlargement of the sweat lodges at MSP at the February meeting.

BOARD OF PARDONS AND PAROLE

Craig Thomas, Executive Director, Board of Pardons and Parole, gave a slide presentation that included the Board's caseloads, correctional population and parole eligibility information, time served information, parole release and release locations information, offenders released from custody information, parole violators returned to custody information, and parole violators with alternative placement information. (EXHIBIT #18) Mr. Thomas also provided an overview of the Board and its functions which are as follows:

- The origin of the Board of Pardons and Parole can be traced back to the 1889 Constitution;

- in 1955, the Board of Prison Commissioners and the Board of Pardons were combined into a reconstituted Board of Pardons and Parole made up of citizens appointed to 6-year terms and five probation and parole officers were assigned to cover the state;
- The Board is currently responsible for executive clemency that includes pardon (total forgiveness by the state for an offense), commutation of sentence (substitution of a lesser sentence for a greater sentence), and parole revocation and release and setting parole conditions;
- The primary objectives of the Board are to carefully review each eligible prisoner nearing the end of a period of incarceration set by the Court and the Legislature; to make every feasible effort to bring about the rehabilitation of offenders incarcerated and demand that offenders prove that they know longer present a risk to the communities; and to allow victims to present a statement concerning the effects of the crime on the victim, victims' families, and whether the offender should be released into the community.
- The Board also sets specific conditions prior to release (appropriate treatment); sets conditions of actual parole (random alcohol and drug testing); takes the position that offenders who are unable to adjust to close supervision or violates any condition of release, that they be promptly returned to custody; has the authority to conditionally discharge an offender from supervision; and has the ability to relieve the offender of the responsibility of paying a supervision fee.
- The Board is made up of part-time volunteer citizens who are paid \$50 a day for every day spent on Board business.
- The Board's expense reimbursement is \$15,000 annually and its total budget is in excess of \$380,000 for operating expenses, personal services, and a staff of seven.
- The Board is not involved in the initial classification at MWP.
- An offender must complete 25% of his or her sentence before a parole hearing is conducted.

Mr. Thomas also provided a memo that answered five questions regarding the ease of access to the Board by women inmates versus male inmates and how parole hearings are conducted. (EXHIBIT #19) He said that the Board is in the early process of developing a risk assessment tool and it is currently tracking offenders who are discharged or paroled from anywhere in the system. Additional office space will also be a problem in the future.

Sen. Grosfield asked if consideration should be given to making the Board of Pardons and Parole full time permanent positions versus part time volunteer positions. Mr. Thomas said that the vast majority of parole boards in the U.S. are full time positions or have at least one full time chairman and there are only approximately five states that have part time boards. He said that there are advantages to having a full time board but the disadvantage is that citizen member input is lost. He said that a 5-member board is a reasonable size but recommended that future legislatures review the possibility of at least one full-time chairman and possibly two full-time board members.

Sen. Bartlett asked what computer system will the risk assessment information be entered into. Mr. Thomas said that currently the risk assessment data is being entered into the Board's computer system and it has not considered incorporating the data into any other system, such as the ProFiles system, but it

is worth addressing. In addition, the risk assessment tool information is to be used to make Board decisions only. Sen. Bartlett asked how the Board measures the success of an offender. Mr. Thomas said that the Board determines success as not committing a new crime.

Rep. McGee asked if jail sanctions were being used. Mr. Thomas said that jails are being used as sanctions, especially for parole violators, rather than returning them to prison.

Sen. Bartlett asked if offenders on parole were supervised more often than those on probation. Mr. Craig said that probation and parole officers supervise offenders, whether probationers or parolees, based on individual characteristics and circumstances of the case. The biggest difference between probation and parole is who has jurisdiction and how the hearing process is conducted. If a probationer violates the conditions of probation, the probationer is entitled to bond, a full court hearing, representation by counsel, an appearance before a judge, and there is a lot of testimony regarding the issues of the violation. If a parolee violates parole, the parolee appears before a hearings officer who can send the parolee directly back to prison and then the Board has a final hearing.

Mr. McDonald said that when a parolee is functionally illiterate, practically homeless and jobless, required to go to school and visit a probation officer that is many miles away and the parolee is without a vehicle, it seems like a parolee is set up to fail. He suggested that if more probation and parole officers are being hired, it would be a good idea if the probation and parole officers could go to where the parolee is located, perhaps to the tribal colleges, for instance.

Rep. Gutsche asked that since the Committee was given the HJR 37 study, would it be possible to segregate the women's inmate data from the men's inmate data since the data effects only 260 inmates. (See Exhibit #18) Mr. Thomas said that the Board's staff is very limited, its ability to keep statistics is very limited, and it was lucky to have provided the information that it has.

Rep. Juneau asked that the information also be segregated by both Native American inmate men and women, if possible. Mr. Thomas said that to retrieve the information that the Committee requested would have to be done manually and he did not have the time nor the staff to do it. However, he would work with the Department to see if it could help provide some of the information. Mr. Thomas said that some data could be available by the February or May meeting.

Both Senators Grosfield and Bartlett commented on the importance of incorporating all of the important data into a system that could be linked to other systems, such as those in the DOC or DOJ.

PUBLIC COMMENT

Nick Tomaski, parent of MSP inmate, provided written comments regarding his inability to access his son's file to find what was used to implicate his son as "a leader" in a disturbance at MSP which resulted in his son's placement in administration segregation and reclassification to maximum detention. (EXHIBIT #20)

Mr. Chelini responded that if evidence about the disturbance was procured from a reliable source, it is something that would be corroborated by Department investigators and it would not be made public for the safety of all individuals involved. He said that he could not express enough how important it is to remain confidential in these situations. Mr. Chelini said that he would let Mr. Tomaski know if the information that he requested could be provided to him.

OTHER BUSINESS

Ms. Kurtz summarized the Committee's consensus on the HJR 37: (1) the general recognition that the data is insufficient but realized that the current data is all that is available; (2) the desire for a presentation on the classification system, specifically how it pertains to women; (3) a request for an estimation on the Department's funding needs for the educational, medical, and mental health contracts; (4) an answer to what types of vocational assessments are conducted upon intake in addition to the educational assessment; and (5) what remains to be done about the chapel issue.

Sen. Grosfield asked that assuming the Committee receives the information that it requested, did it feel that the options paper could be put in a narrative form and present it as the final report on HJR 37.

Sen. Bartlett was hesitant to sign off on the HJR 37 study because the Committee did not have enough information to fulfill subsection 5 of HJR 37--looking at the ability of the system to place women in the least restrictive environment during their incarceration so that they can access training, education, and programs.

Rep. Gutsche was also hesitant to sign off on HJR 37 because of the inherent lack of information, particularly in Topic #2--Dramatic Increase in Population at MWP. (See Exhibit #5) She said that the Committee had until the 2001 session to get the study done and to do the HJR 37 study and do it well, the Committee must have sufficient data.

Ms. Kurtz said if the Department's ProFiles system comes on line in June, she was unsure whether the Committee would have concrete answers and data by the 2001 session and she was unsure what direction to take the study. She said that information cannot be made that does not currently exist.

Rep. McGee said that parts of the HJR 37 study could be put into a draft final report; and as information is received, the final report can be edited and finalized before the 2001 session.

Rep. Gutsche said that the HJR 37 study pertains to 260 women not thousands of women and she believed that getting the information from the Department was doable even if it meant having Department staff manually pull the files and put the data together. She requested that the Committee leave her suggestion open as an option.

There being no further business; the meeting recessed at 5:30 p.m.

November 19, 1999
Missoula Fire Station No. 4
Missoula MT

The Committee reconvened at 8:00 a.m. (See Attachments #2 and #4 respectively for Committee members present and excused and visitor attendance)

RIGHTS OF INMATES

Jeff Renz, University of Montana School of Law, said that people who are sent to prison retain rights, one of which is the free exercise of religion. However, the inmate rights are not without restrictions. The Thornberg Case set four criteria that continue to be applicable to date: (1) whether the regulation that the prison articulates has a logical connection to a legitimate governmental interest; (2) whether there are alternate means for an inmate to exercise a right; (3) the impact of accommodating an inmate's right on staff, other inmates, and prison resources; and (4) whether alternatives that fully accommodate an inmate's right are readily available to prison officials. He said that MSP accommodates Indian inmate spiritual interests and needs. MSP has had a sweat lodge for years, it allows spiritual leaders to enter the prison periodically to meet with Indian inmates, and it allows smudging to take place. The fact that MSP accommodates Indian religious needs indicates that requiring the regional prisons to do the same imposes no significant burden on the regional prisons and they must accommodate those religious needs.

Sen. Grosfield asked where the basis was for the ability of prison officials to take away inmate rights. Mr. Renz said that when a person is convicted of a crime, the person automatically loses rights. The person loses the right to vote and the right of due process which is a deprivation of all liberties found within the Bill of Rights. When a person is sent to prison, prison administrators can say that because they have a security interest, because they have an interest in order, and because they do not want prisoners to escape, they can restrict the few rights that the inmates retain. Sen. Grosfield asked if county jails would have to accommodate religious rights. Mr. Renz said that if county jails can accommodate, they should, but the average length of stay in a county jail is much shorter than a prison stay. Therefore, the loss of an inmate's First Amendment liberties for a short period of time is not as significant a loss as it would be over a period of several years. He said that when the Shelby prison takes on the responsibility of housing and confining inmates who have been convicted in the state courts on behalf of the state, they take on the duties that the state would have if it were a state prison.

Sen. Bartlett asked for comments about MSP prohibiting smudging and pipe ceremonies because of the no-smoking policy. Mr. Renz said that although he was unsure, it may be that the prison has decided that allowing prisoners to hold tobacco for purposes of pipe ceremonies impacts the contraband issues.

Mr. Chelini will provide the Committee with the MSP's current policy for smudging and pipe ceremonies.

Sen. Grosfield asked for comments on:

- the no-open burning policy established by Billings and how it affects the MWP's ability to allow sweat lodges;
- the issue of no full-time FTE prison chaplain at MWP; and
- the issue of what rights prisoners have to face their accuser and what rights they have to access to information to appeal their classifications (this question is in regards to Mr. Tomaski's son who is an inmate at MSP).

Mr. Renz's responses are as follows:

- that the Committee should call the city of Billings to see if it MWP could open burn if sweat lodges were provided to Indian women inmates;
- when the state says that women inmates have the same rights to services as men, it does not necessarily mean that the means of providing those services must be exactly the same. If MWP is adequately providing women's religious needs through volunteer chaplains, the MWP would not be required to hire full-time FTE to provide those services; and
- when an offender is sentenced to prison, prison officials are responsible for placement and classification of the offender. If the prisoner is involved in a disruption within the prison, even though the offender is being sent there as punishment, it is within the scope of the expected confinement to move the prisoners through security levels within a population. Prison officials decide a change in classification levels and the offender has no rights at all.

Sen. Bartlett said that Mr. Tomaski and his son contend that the DOC had violated its own policy:

. . .the details of any information from an anonymous source should be shared with the offender. . . and . . .the offender must receive, orally and in writing, a statement of the findings, evidence relied upon, sanctions, and reasons for the sanctions"

Mr. Renz said that MSP has been rewriting its disciplinary policies. However, if these policies are in place today, then the prison must follow them. If MSP does not follow its own policy, the prisoner's recourse, if any, could be to bring action in District Court to compel the Department to follow its policy.

DEPARTMENT OF JUSTICE

Steve Bullock, Executive Assistant Attorney General, Department of Justice, provided an overview of the Department of Justice (DOJ) and its 11 Divisions. (EXHIBIT #21) He said that the DOJ is the repository for all conviction and criminal history records and the Board of Crime Control

publishes a comprehensive statistical report. However, the Board is typically a year behind in publishing the information because the information is voluntarily provided by local law enforcement.

Rep. Stovall asked what jurisdiction sets the speed limit law for 2-lane highways. Mr. Bullock said that local authorities petition the Department of Transportation to do a study on lowering the speed limit in a particular area on a 2-lane road. The problem is that the studies take a very long time so the DOT agreed to conduct windshield studies of questionable areas to lower the speed limit until further study could be completed. He said that the Legislature may want to reconsider the 2-lane highway issue in the next session.

Sen. Halligan said that one recommendation from the Committee may be that it charge an agency with the responsibility of collecting criminal justice data and coordinating the data with other agencies. Many legislators were upset about how costly the information systems were. In the end, they still have no idea what the data systems will do to integrate information and none of the data makes any sense across agency boundaries. He asked if the DOJ could be the coordinating agency. Mr. Bullock said that the DOJ could provide the data links that it currently has and agreed that the responsibility should be given to some agency. He added that part of the data collection issue would have to come in the form of a legislative statewide mandate on local law enforcement and other entities to provide the necessary information. The Board of Crime Control may be the entity to collect and coordinate criminal justice information.

Rep. Juneau said that her interest in data collection was to pinpoint the factors that are creating the staggering number of Native American being incarcerated in the MWP, MSP, and federal institutions. Some statistics that she would like are if Indians are being sentenced to prison more readily than nonIndians or whether Indians are committing more violent crimes.

Mr. Bullock provided responses to Committee staff questions regarding issues that the DOJ is currently dealing with and potential issues on the horizon. (EXHIBIT #22)

Jan Dee May, Administrator, Central Services Division, Department of Justice, said that the DOJ runs several of the largest statewide computer systems in state government and it is very unnerving that some of these systems may not be maintained because of the DOJ's inability to hire qualified information technology (IT) people. IT programmers are very much in demand and the private sector can offer them double the salary. The DOJ has spent thousands of dollars advertising for IT positions over a 3-month period and have had no responses. She added that SABHRS (MTPRRIME) was also an

attempt to integrate all of the other stand-alone systems, such as SBAS and PPP, but it has been a very frustrating system because of the complexity of its interactions. Once the system comes on line, the functionality of the system will be very good but currently, functionality is nonexistent because it takes staff up to 3-times as long to make any type of transaction. Since she did not foresee SABHRS becoming so streamlined that the DOJ could give up any FTE, it will become a budget request in the 2001 session. Although she held some optimism that a functional SABHRS will eventually come to pass, she was unsure whether it would be as efficient as the old system.

Sen. Bartlett asked if part of the reason that it takes so long to make payroll and vendor payments, for example, was because staff was required to enter more data than what was required under SBAS. Ms. May said that entering data into SBAS took three lines where it takes 20 to 40 lines on the new system depending on the type of information being entered. She said that SABHRS' programmers are the best and the problems are not their fault, but she wished that there was a "lemon law" for the software package itself.

Sen. Grimes asked if SABHRS provided the necessary data and reports needed by the Department and would it have that functionality eventually. Ms. May said that currently, the reports that she needs to project budgets are nonexistent. Ms. May said that SABHRS staff will continue to grind through the process and independent efforts to implement temporary in-house systems by the agencies are ongoing because the agencies cannot wait any longer. In addition, she felt that it would have been better if the programs under SABHRS had been brought online incrementally rather than all at once.

Sen. Bartlett said that the hard reality is that SBAS was not salvageable and all of the systems would need to be replaced in the very near future. This cannot be accomplished without agony. High tech industries improve their software packages and will do anything possible to make money. However, they give no thought to easing the transition from an old system to a new system. She suggested that the Committee invite legislative staff who are knowledgeable in information technology to provide independent information because legislators are going to be dealing with high tech industries more and more. Sen. Bartlett added that the Legislature is going to have to understand that if state agencies are going to hire qualified IT programmer personnel, it is going to cost money.

Rep. McGee asked if the DOJ could provide the Committee with a list of statutory requirements under HB 64 that the Department cannot fulfill by the February meeting. Ms. May said that she could provide the obvious ones but could not promise a complete list.

Mr. Bullock provided a copy of Montana's Criminal Justice Information Connections and a Hypothetical Sexual and Violent Offender Registry Crime Map. (EXHIBITS #23 and #24 respectively)

DEPARTMENT OF CORRECTIONS FOLLOWUP

In response to Committee questions from Thursday's meeting: Mr. Chelini said that:

- the MSP allows smudging and tobacco is allowed in the Religious Activity Center for religious activities;
- the circumstances surrounding Mr. Tomaski's son's involvement in the disturbance at MSP are such that viewing the evidence is not possible. Accessing the administrative files would compromise safe operations within the prison and the safety of other inmates;
- educational assessments at MWP are currently being conducted upon intake but specific vocational testing is not conducted because of on-site funding and resource issues. However, the Department is reviewing the possibility of vocational education and testing; and
- women offenders in New Mexico can contact their families either by telephone or video. Video contact has never been requested by the inmates and it is available at the MWP. However, he was unsure whether it was available at the New Mexico facility.

Referring to Mr. Tomaski and his son, Sen. Grosfield asked if all inmates understood that particular policy. Mr. Chelini said that to tell Mr. Tomaski's son that there was information received from his fellow inmates could be very dangerous and he believed that inmates understood the policy. Department policy states "should show the information" meaning that if the Department does not feel that it is wise to show the information, it does not have to do so.

Referring to Exhibit #10 of the September 16, 1999, meeting, Rep. Gutsche requested that information on how long a sentence did the women serve, what the sentence was, when they were eligible for parole, and any other pertinent information be added to the breakdown. Ms. Kurtz said that the breakdown provided information on those inmates that had presentence investigations (PSIs) conducted but that the Department was in the process of adding to the database those inmates who did not have PSIs.

COURT FUNDING AND STRUCTURE COMMITTEE UPDATE (SB 184)

Ms. Kurtz said that SB 184 establishes local government, court funding, and structure committees. The Department of Revenue provides the main staff for the court funding structure and its main purpose is to review funding streams to the District Court system and how those funding streams were changed by past legislative sessions. The local government, court funding, and structure Committees will also review the possibility of streamlining funding to the court system by entirely funding the District Court system with state funds. She will keep the LJAC updated.

The Committee requested the names and addresses of the local government, court funding, and structure committees and the names of those on the Judicial Reapportionment Committee which is a subcommittee of the Legislative Council.

EMINENT DOMAIN UPDATE

Krista Lee, Eminent Domain Subcommittee Staff, Legislative Environmental Quality Council, provided a copy of HJR 34 (eminent domain study), an agenda for the Subcommittee's December 1, 1999, meeting, and provided a slide presentation and overview of the Subcommittee's Revised Work Plan. (EXHIBITS #25, #26, and #27 respectively)

Referring to an 18-month eminent domain case that he was involved in, Sen. Halligan suggested that the Subcommittee review the possibility of a mediator to help settle cases before the threat of condemnation is levied. Although the process is not binding, costs are reduced for all parties involved and it shortens the process time. Rep. McGee agreed that mediation was needed and said that the one of the issues being discussed by the Subcommittee is how many times the threat of condemnation was used. Eminent domain can be used by a great number of public service entities and the issue has significant implications. Sen. Halligan added that as soon as a public service entity makes an offer, the threat is there and mediation should begin from that point.

Rep. McGee said that the issues that the proposed work plan identifies need to be addressed. To date, the Subcommittee is gathering information and it is premature to begin reaching any conclusions. Rep. Gutsche added that the question of mediation was included in the questionnaire that was sent to people who have had dealings with eminent domain. There was also discussion about whether case studies should be conducted on incidents that have happened in the past or those happening in the present, such as the Tongue River Railroad and the Yellowstone Pipeline which are the two main reasons for the series of public hearings scheduled by the Subcommittee.

EXPECTATIONS FOR HJR 37 AND ADJOURNMENT

Ms. Kurtz asked what expectations the Committee had for the HJR 37 study other than the collection of data. She said that in listening to Rep. Hurdle's testimony about HJR 37, her biggest concern was the sharp nationwide increase in the number of women being incarcerated. However, HJR 37 does not contemplate answering that question but rather what is happening to the inmates once they are incarcerated. The Committee responded that:

- the Committee will not have all necessary information by the time the final report is produced;
- begin a statistical and numerical final draft report that can be edited and changed as information is received;

- collect information about the best correctional practices for women prisons that is available through the National Justice Information Center and in other states as compared to Montana;
- review the nationwide war on drugs and how it has affected the prison populations;
- include statements using national data. and compare that data to Montana's data;
- include prevention program elements that are successful and what programs are provided to women offenders once they are incarcerated;
- include a comparative analysis between men and women inmates in Montana or other states (are the same programs provided to men and women, do women have the same access to programs as men, are women more likely to complete the programs, etc.); and
- the HJR 37 study result should be information that future Legislatures can build on.

Sen. Bartlett said that Committee members receive many letters from offenders and parents of offenders who are complaining about the prison system and from other people requesting modifications in prison system policy. She suggested that staff prepare a notebook of the correspondence that would be available to legislators and legislative committees if issues arose that the correspondence had a bearing on.

Rep. McGee agreed and suggested writing a simple Committee response letter recognizing that the correspondence had been received or discussed and that it will be filed in a permanent correspondence file.

Sen. Grimes said that with the passage of SB 11, the Administrative Code Committee was repealed. Part of the Committee's responsibility when it receives correspondence is to review it to see if an administrative rule has been violated or incorrectly drafted. If legal issues are not involved in the correspondence, then it becomes a separation of powers issue and the Committee cannot make a decision that is reserved for the whole Legislature to make. He suggested that Committee staff identify any overriding issues that may arise from the correspondence and make them an agenda item so that the Committee is able to address them. If after research and no overriding issue is found, the response letter should state that.

Sen. Grosfield also suggested a generic letter to Executive Branch agencies so that the correspondence could be forwarded if it requests information or an answer. Sen. Bartlett requested an acknowledgment letter from the agency stating that the correspondence has been received.

Sen. Grimes said that he did not want the legislative interim committees to become forums for public hearings on the pros, cons, and faults of a governmental agency because it was inefficient use of the committees' time and a firm line should be held because the issues may be such that the committees are unable to do anything about them. He said that unless it had a direct bearing on the Committee, the issues should not be brought before the Committee.

Rep. McGee suggested a standard agenda item on correspondence/rules in case an issue arises.

Ms. Kurtz provided a registration form for a continuing legal education forum (CLE) on corrections law.
(EXHIBIT #28)

Sen. Bartlett volunteered for the Governor's Advisory Council for Projecting Inmate Populations.

The next Committee meeting is December, 10, 1999, in the Supreme Court chambers and Committee members should consider topics that they may want to discuss with the Court.

Sen. Bartlett said that the Sentencing Review Commission is attached to the Court and she would like to see data that the Commission kept in order to compare the difference in sentences, sentences for similar types of crimes, and whether the sentence given an offender for a crime was out of line with sentences given to other offenders with a similar crime.

The Committee will continue discussions on the MWP chapel issue at the February meeting. There being no further business; the meeting adjourned at 12:15 p.m.

Following adjournment of the meeting, some Committee members toured the new State Crime Lab that is currently under construction. **Bill Unger, State Crime Lab**, said that:

- the new building will be leased for \$16.60 a square foot;
- the Crime Lab has 18 forensic scientists and 24 staff members;
- the backlog will be brought up to date in the near future; and
- the Crime Lab has been aggressively pursuing federal funding, especially in the DNA area, but in order to access the funds, the Crime Lab will have to become accredited.

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